

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YURI STAROSTENKO and IRINA
TSAREVA-STAROSTENKO

Plaintiffs,

-v.-

UBS AG (A SWISS BANK) and UBS
(BAHAMAS) LTD,

Defendants.

19 Civ. 9993 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

Plaintiffs filed this initial complaint *pro se* in this action on October 28, 2019, against Defendant UBS AG (Dkt. #3) and were granted *in forma pauperis* (“IFP”) status on November 22, 2019 (Dkt. #8). On March 30, 2020, UBS AG made a limited appearance in this action to file a pre-motion submission regarding UBS AG’s intended motion to dismiss the complaint on grounds of *inter alia* improper service and lack of personal jurisdiction. (Dkt. #23). Plaintiffs’ responded with various submissions, one of which requested to file an amended complaint. (See Dkt. #30). On April 29, 2020, the Court ordered Plaintiffs to file their amended complaint by May 28, 2020, and also set a schedule for further pretrial submissions. (*See id.*).

On May 28, 2020, Plaintiffs filed an amended complaint. (Dkt. #31). On June 11, 2020, UBS AG filed a renewed pre-motion submission concerning its anticipated motion to dismiss. (Dkt. #33). UBS AG’s letter stated that it would move to dismiss the first amended complaint for the reasons that: (i) Plaintiffs lacked standing to pursue this action against UBS AG; (ii) UBS AG was not

properly served; (iii) UBS AG is not subject to the Court's personal jurisdiction; (iv) the case should be dismissed on *forum non conveniens* grounds; (v) Plaintiffs' fail to state a claim; and (v) if the federal claims are dismissed, the Court lacks subject matter jurisdiction over the remaining claims. (*Id.*). Plaintiffs responded on June 25, 2020 addressing some of UBS AG's arguments; but they did not respond to the service issue, nor did they request for the Court to hold off on scheduling motion practice until service could be effected. (*See* Dkt. #35). Accordingly, on June 26, 2020, the Court issued an order setting a briefing schedule for UBS AG's motion. (Dkt. #36).

UBS AG filed its motion to dismiss on July 27, 2020. (Dkt. #41; *see also* Dkt. #44, 45). Plaintiffs responded, on August 17, 2020, with a second amended complaint (the "Second Amended Complaint") that added UBS (Bahamas) Ltd. as a defendant (Dkt. #46), and a request for an issuance of summons of to UBS (Bahamas) Ltd. (Dkt #47). The Court will construe the Second Amended Complaint as a motion for leave to file such pleading, recognizing the liberality of Federal Rule of Civil Procedure 15 and Plaintiffs' *pro se* status, and will accept such filing. However, the Second Amended Complaint will serve as the operative pleading in this case and will supplant, rather than supplement, Plaintiffs' prior complaints.

Further, given the various service issues in this case, the Court will issue an order of service under separate cover.

SO ORDERED.

Dated: August 20, 2020
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Failla".

KATHERINE POLK FAILLA
United States District Judge